

Message Text

LIMITED OFFICIAL USE

PAGE 01 STATE 047650
ORIGIN STR-04

INFO OCT-01 IO-13 ISO-00 FEA-01 AGRE-00 CEA-01 CIAE-00
COME-00 DODE-00 EB-08 FRB-03 H-01 INR-07 INT-05 L-03
LAB-04 NSAE-00 NSC-05 PA-01 AID-05 SS-15 ITC-01
TRSE-00 PRS-01 SP-02 OMB-01 AF-08 ARA-06 EA-07 EUR-12
NEA-10 NSCE-00 SSO-00 USIE-00 INRE-00 /125 R

DRAFTED BY STR:BSEASTRUM:JT 395-5081 3/3/77
APPROVED BY STR:TGRAHAM
USDA:GWANAMAKER
TREASURY:MGADBAW
COMMERCE:RSUPPE-BLANEY
STR:MPOMERANZ
LABOR:DWANAMAKER
STATE:TO'HERRON

-----032226Z 010951 /63

O 032205Z MAR 77
FM SECSTATE WASHDC
TO USMISSION GENEVA IMMEDIATE

LIMITED OFFICIAL USE STATE 047650

E.O. 11652:N/A

TAGS:ETRD;EAGR

SUBJECT: AGENCY COMMENTS ON NFDM REBUTTAL BRIEF

1. COMMERCE AND LABOR BOTH HAD NO COMMENTS ON THE BRIEF. MORT POMERANZ OF STR HAS TWO COMMENTS: ON PAGE 1, LAST LINE OF PARA 1, HE QUESTIONS WHETHER "DIRECT DEBT SERVICING CHARGE" AND "COST OF THE BANK GUARANTEE" ARE NOT THE SAME CONCEPTS. ON PAGE 9, LAST PARA, "FEEDING STUFFS" PROBABLY SHOULD BE "FEEDSTUFFS."

LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 02 STATE 047650

2. TREASURY, THROUGH MIKE GADBAW OF GENERAL COUNSEL'S OFFICE RAISED SOME GENERAL POINTS TO CONSIDER. HE SUGGESTS YOU DOWNPLAY YOUR ARTICLE I ARGUMENT BEGINNING PAGE 8. HE QUESTIONS WHETHER A CHARGE WHICH WAS VALID UNDER ARTICLE 3 COULD BE A VIOLATION OF ARTICLE I AS A SEPARATE COUNT. IF THE U.S. DOESN'T WIN ON THE ARTICLE 3 CHARGE, TREASURY DOESN'T BELIEVE WE WOULD HAVE THE GROUNDS

TO STAND ON ARTICLE I BY ITSELF. THUS THE U.S. SHOULD NOT SPEND TIME BELABORING THIS POINT.

3. REGARDING THE LIST OF "LIKE" PRODUCTS, TREASURY QUESTIONS WHETHER WE WOULD CONSIDER THESE LIKE PRODUCTS UNDER OTHER CIRCUMSTANCES UNDER ARTICLE I. FOR EXAMPLE, IF THE U.S. GAVE TARIFF CONCESSIONS ON ONE OF THESE PRODUCTS, ARTICLE I DOESN'T REQUIRE THAT WE EXTEND

THAT CONCESSION TO ALL THE OTHER PRODUCTS. THUS THE SECOND SENTENCE ON PAGE 9 REFERRING TO "LIKE" PRODUCTS IN THIS CONTEXT APPEARS TO BE BROAD AND SHOULD BE QUALIFIED.

4. USDA, GEORGE WANAMAKER, SUGGESTS THE FOLLOWING CHANGE IN PAGE 8, PART III: IN PARA 2, LAST SENTENCE, DELETE "SINCE THE UNITED STATES DOES NOT EXPORT THESE PRODUCTS TO THE EC." (FYI: WHILE THE UNITED STATES IS ONLY A MINOR EXPORTER OF FISH MEAL TO THE EC, EXPORTS INCREASED FROM 2,833 TONS IN 1975 VALUED AT \$245,000 TO 15,714 TONS VALUED AT \$5,873,000 - THE YEAR OF THE NFDM SCHEME).

5. STATE DEPARTMENT CONTRIBUTED THE FOLLOWING COMMENTS AND CONCERNS: GENERALLY, STATE FEELS THAT THE U.S. SHOULD STRESS THE EC'S ARGUMENTS THAT WE HAVE FAILED TO DEVELOP A CASE SHOWING DAMAGE TO OUR TRADE IS IRRELEVANT. ARGUMENTATION USED PREVIOUSLY SHOULD SUFFICE.

6. STATE BELIEVES THAT ARGUMENTATION OVER LIKE PRODUCTS LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 03 STATE 047650

SHOULD BE MADE IN CONTEXT OF ARTICLE 3 AND WITHOUT REGARD TO ARTICLE 1. STATE HAS SECOND THOUGHTS ABOUT GIVING PANEL ANY LIST OF LIKE PRODUCTS, ALTHOUGH IT AGREES THAT ARGUMENTATION SHOULD FOCUS ON SPECIFIC PRODUCTS INVOLVED IN THIS CASE. WE SHOULD REFUTE EC ARGUMENT THAT LIKE PRODUCTS MUST BE "COMPETITIVE" PRODUCTS IN THE SENSE THAT THEY HAVE ROUGHLY EQUIVALENT PRICES. STATE SUGGESTS U.S. STRESS THAT CONCEPT OF LIKENESS FOR PURPOSES OF ARTICLE 3 AND AS RELEVANT TO THIS CASE SHOULD BE BASED ON SUBSTITUTABILITY IN END-USE. THIS WOULD RESULT IN A DEFINITION BASED ON PROTEIN AND OTHER NUTRITIONAL VALUES. U.S. REP MAY POINT OUT THAT EC SYSTEM IMPLICITLY RECOGNIZES LIKENESS, IN THIS SENSE, OF THE PRODUCTS INVOLVED, BECAUSE AMOUNT OF SURETY DEPOSIT VARIES ACCORDING TO PROTEIN CONTENT, WHICH MEANS ALL PRODUCTS ARE CONSIDERED TO BE ANIMAL FEED COMPONENTS. STATE ALSO SHARES TREASURY'S CONCERNS PARAS 2 AND 3 ABOVE.

7. STATE THINKS WE SHOULD ACKNOWLEDGE THAT ANY DEFINITION

OF "LIKENESS" IS FOR THE PURPOSES OF THIS CASE ONLY.
WITHIN CONTEXT OF EC SYSTEM, ARTICLE 3 PARA 4 CONCEPT
OF LIKENESS WOULD EMBRACE BOTH NFDM AND SOYBEAN MEAL
BECAUSE OF THEIR SUBSTITUTABILITY AS ANIMAL FEED
COMPONENTS. IN OTHER CONTEXTS, HOWEVER, SUCH AS FOOD AID
OR INDUSTRIAL PROCESSING, NFDM AND SOYBEAN MEAL ARE
CLEARLY NOT "LIKE PRODUCTS", AND WE SHOULD NOT LET THE

EC ACCUSE US OF IMPLYING THAT THEY ARE.

8. PAGE 2, LINE 20: CHANGE "CHARGED" TO "USED."

9. PAGE 3, LINES 5-10 STATE UNDERSTANDS THAT EC
PRODUCTION SUBSIDIES ARE PART OF EC SYSTEM. THE SUBSIDY
A DOMESTIC PRODUCER WOULD LOSE IS NOT A NEW OR ADDITIONAL
SUBSIDY FLOWING FROM THIS PROGRAM. IT IS THUS NOT AN
"ADDED" INCENTIVE "TO PRODUCE MORE." EC WILL ARGUE THAT
LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 04 STATE 047650

APPROXIMATELY EQUIVALENT BURDEN IS PLACED ON BOTH DOMESTIC
PRODUCERS AND IMPORTERS: REFUTATION OF THIS ARGUMENT MAY
GET TOO TECHNICAL AND DETAILED TO HAVE ANY EFFECT ON PANEL.
WE SHOULD NOT STRESS, OR PERHAPS NOT USE, THIS ARGUMENT.
WE CAN PREVAIL ON THIS POINT WITH OUR ARGUMENT THAT
EXCEPTIONS FOR SPECIFIC PRODUCTS DESTROY EC'S CLAIM THAT
SURETY DEPOSIT IS EQUIVALENT TO AN INTERNAL TAX ON LIKE
PRODUCTS.

10. PAGE 3, LINE 24: STATE SUGGESTSWE END SENTENCE
AFTER WORD "IMPORTATION." MENTION OF TARIFF RATE COULD
OFFER EC OPPORTUNITY TO CONFUSE OUR REAL ARGUMENT.

11. PAGE 4: STATE WOULD REVISE ARGUMENTATION HERE TO
STRESS THAT EC PROGRAM DID "AFFORD PROTECTION TO DOMESTIC
PRODUCTION." THE NFDM SURPLUS DISPOSAL PROGRAM PROTECTED
PRODUCERS OF NFDM WITHIN MEANING OF ARTICLE 3 PARA 1.
EC PRODUCERS OF MEAT MEAL AND THE OTHER EXEMPTED PRODUCTS
WERE ALSO PROTECTED BY THE SCHEME. STATE IS CONCERNED
THAT EC MAY PREVAIL WITH ITS ARGUMENT THAT ARTICLE 3
MUST BE READ AS A WHOLE; WE SHOULD NOT APPEAR TO BE AFRAID
OF EC ARGUMENTS RE PARA 2. STATE WOULD DROP WORDS
"ALLEGEDLY" PAGE 4 LINE 24 AND "EXCESSIVE" PAGE 5 LINE 1.

12. PAGE 5, LINE 13;STATE SUGGESTS WE DROP WORD "BURDEN"
IN FAVOR OF EXACT GATT ARTICLE II TERMINOLOGY"TAX OR
CHARGE." IMMEDIATELY THEREAFTER WE SHOULD MAKE OUR
ARGUMENT THAT SYSTEM DID EXACT FINANCIAL CHARGE.

13. PAGE 6, LINE 6: STATE WOULD ADD "BECAUSE THEY ARE
HIGH-PROTEIN ANIMAL FEED COMPONENTS" TO END OF SENTENCE.

14. PAGE 7, FIRST FULL PARA: STATE FINDS A WEAKNESS IN
OUR ARGUMENT THAT THE DENATURING REQUIREMENT IS A MIXING
REGULATION, IN THAT THERE IS NO REQUIREMENT THAT THE
DENATURING AGENT BE FROM DOMESTIC SOURCES.
LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 05 STATE 047650

VANCE

LIMITED OFFICIAL USE

NNN

Message Attributes

Automatic Decaptioning: X
Capture Date: 01-Jan-1994 12:00:00 am
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: EXPORTS, BRIEFING MATERIALS, NONFAT DRIED MILK, FEED ADDITIVES
Control Number: n/a
Copy: SINGLE
Sent Date: 03-Mar-1977 12:00:00 am
Decaption Date: 01-Jan-1960 12:00:00 am
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 22 May 2009
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1977STATE047650
Document Source: CORE
Document Unique ID: 00
Drafter: 5081 3/3/77
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
Film Number: D770074-0134
Format: TEL
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1977/newtext/t19770395/aaaadgfp.tel
Line Count: 182
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: 75fb37be-c288-dd11-92da-001cc4696bcc
Office: ORIGIN STR
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 4
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: n/a
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 09-Mar-2005 12:00:00 am
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 3215149
Secure: OPEN
Status: NATIVE
Subject: AGENCY COMMENTS ON NFDM REBUTTAL BRIEF
TAGS: ETRD, EAGR, EPAP, (POMERANZ, MORT)
To: GENEVA
Type: TE
vdkgvwkey: odb://SAS/SAS.dbo.SAS_Docs/75fb37be-c288-dd11-92da-001cc4696bcc
Review Markings:
Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
22 May 2009
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009